

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

HISAN LEE,
SELBOURNE WAITE,
DELROY LEE, and
LEVAR GAYLE,

Defendants.

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BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

USDC SDNY
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07 Cr. 003 (BSJ)
Opinion & Order

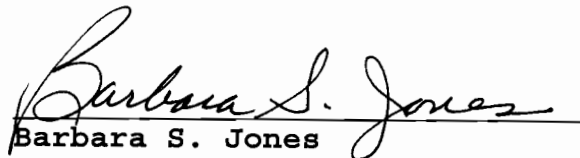
Defendants have moved for a hearing to determine whether the Government misused the grand jury. Defendants assert that the Government used the grand jury to subpoena two individuals about phone calls made around the time of the Bunny Campbell homicide, and that the Government then questioned the individuals about the phone calls. Defendants contend that it appears that the sole or dominating purpose behind subpoenaing these individuals was to help the Government prepare for trial.

"The law is settled in this circuit and elsewhere that it is improper to utilize a Grand Jury for the sole or dominating purpose of preparing an already pending indictment for trial." In re Grand Jury Subpoena Duces Tecum Dated January 2, 1985, 767 F.2d 26, 29 (2d Cir. 1985) (internal quotation marks and citations omitted). In determining the dominant purpose of a grand jury subpoena, the Court applies "a legal standard designed to ensure that the grand jury, a body operating

peculiarly under court supervision is not misused by the prosecutor for trial preparation." Id. (internal citation omitted).

The Government has presented the Court with an ex parte letter that provides a satisfactory explanation for the issuance of these subpoenas. The letter will be filed under seal for purposes of any appeal Defendants wish to take. Accordingly, Defendants' motion for a hearing to determine whether the Government misused the grand jury is DENIED.

SO ORDERED:


Barbara S. Jones
UNITED STATES DISTRICT JUDGE

New York, New York
February 19, 2010